

service as a complement to, not replacement for, wireline service.²² Indeed, in its recent cut-the-cord study, Verizon touted its ability to retain wireline customers through wireless/wireline bundling.²³ At the same time, Sprint and T-Mobile, neither of which has an ILEC affiliate in the U.S., target (although apparently largely unsuccessfully) customers with higher minute plans to encourage customers to cut the cord.²⁴ These independent wireless companies are unable to

²² See Verizon Communications Inc., 2006 Interactive Annual Report, Management's Discussion and Analysis of Results of Operations and Financial Condition, <http://investor.verizon.com/financial/annual/2006/mda01.html> (last visited Mar. 27, 2008) ("We are also developing and marketing innovative product bundles to include local wireline, long distance, wireless and broadband services for consumer and general business retail customers. These efforts will also help counter the effects of competition and technology substitution that have resulted in access line losses, and will enable us to grow revenues by becoming a leading video provider."); see also Marguerite Reardon, Verizon Adds Wireless to Bundle, ZDNet News, Jan. 30, 2007, http://news.zdnet.com/2100-1035_22-6154671.html ("During the second half of 2006, Verizon began offering a bundle that allowed people to talk for free between their cell phones and their Verizon home phones. It also provides a single voice mailbox that can be accessed via either service. But the service is limited to certain customers in Texas and Florida. And it doesn't yet integrate any of the broadband or TV services the company is offering."). Verizon markets a low-priced wireline/200 minutes per month wireless plan with unlimited calling between the customer's wireless and wireline phones for \$59.99 month in-region; See Verizon Wireless Plus Home Bundle, <http://promo.verizon.com/wwbundle/?LOBCode=C&PromoTCode=MXG00&PromoSrcCode=V&POEId=VU1SP> (last visited Mar. 27, 2008). As a result of these sorts of bundling practices, Verizon has the lowest churn rate in the industry. See Verizon 4Q 2007 Earnings Call Transcript (Jan. 28, 2008), http://seekingalpha.com/article/61897-verizon-q4-2007-earnings-call-transcript?source=side_bar_transcripts&page=2.

²³ See *Verizon cut-the-cord study* ("'Deepening further the loyalty of our existing base of landline phone customers is essential to our bundling strategy, which seeks to deliver an array of top-quality services at value-based prices,' said Marilyn O'Connell, Verizon Telecom chief marketing officer. 'These bundles are popular with consumers who believe that cable competitors can't offer the same level of reliability as we do with the traditional Verizon home phone service.'").

²⁴ See Kelli Grant, *Unlimited Wireless Plans Prove to Be Pricey for Most*, Smart Money, Feb. 22, 2008, <http://www.smartmoney.com/dealoftheday/index.cfm?story=20080222-unlimited-wireless-plans> (noting that Sprint was the first carrier to test market unlimited wireless calling plans); see also *Strategy Analytics: Sprint PCS Users Lead Landline Substitution While Verizon Wireless Leads Customer Satisfaction*, Business Wire, Apr. 6, 2004,

entice customers with a bundle of wireless and wireline service and therefore have every incentive to encourage their customers or prospects to drop their wireline services. But Sprint's lack of a wireline affiliate is harming its ability to retain customers through bundling. This is part of the reason why Sprint experiences the highest churn in the industry and is suffering substantial wireless line losses.²⁵

Contrary to Verizon's assertions, as a result of its bundling practices in-region, Verizon is able to retain wireline customers while at the same time achieving a high wireless market share. There can therefore be no doubt that Verizon's bundling tactics and coordination between Verizon Inc. and Verizon Wireless provide Verizon with a substantial in-region advantage. The Joint Commenters are not suggesting that such bundling is inappropriate. Rather, it shows that Verizon Inc. does not treat Verizon Wireless as a competitor but rather as a partner in the overall goal of increasing Verizon Inc.'s profits and preventing erosion of wireline access lines. Therefore, it remains appropriate to count Verizon Wireless' cut-the-cord customers as part of Verizon's market share.

<http://www.allbusiness.com/media-telecommunications/5589565-1.html>. Verizon Wireless' advantage is only magnified because carriers other than Verizon Wireless must pay inflated special access prices while Verizon Wireless' in-region special access costs are merely an internal wealth transfer.

²⁵ See Sramana Mitra, Sprint's Imploding, Seeking Alpha, Mar. 7, 2008, <http://seekingalpha.com/article/67627-sprint-s-imploding>. However, Sprint has been aggressive in partnering with a landline cable partner in order to offer a wireline/wireless/video bundle and reduce churn. See, e.g., Joan Egenbretson, *Multiplay Offerings Go Wireless*, Telephony Online, Sept. 10, 2007, http://telephonyonline.com/wireless/news/telecom_multiplay_offerings_go/.

C. The FCC Should Again Reject Verizon’s Attempt to Take Into Account Carriers’ Use of Special Access In the Forbearance Analysis.

As was the case in the 6-MSA proceeding, Verizon alleges that competitors purchase a significant number of special access voice grade equivalent lines and that these lines should be considered in any assessment of competitors’ market share and ability to compete without UNEs. But this argument should be rejected in Rhode Island for the same reason that the FCC found such evidence to be irrelevant in the *6-MSA Order*. As the FCC held in the *6-MSA Order*:

For the reasons set forth in the *Triennial Review Remand Order*, the Commission already has rejected the argument that use of special access, in itself, is a reason to forbear from UNE obligations, based on a number of different factors. While Verizon cites a significant amount of retail enterprise competition relying upon Verizon’s special access services and UNEs, we cannot readily determine the extent to which these wholesale inputs are used to compete for local exchange services, interexchange services or mobile wireless service Furthermore, the Commission repeatedly has recognized that the availability of UNEs is a competitive constraint on special access pricing.

Id. ¶ 38.

Verizon argues the special access data it filed in this proceeding corrects for errors made in the 6-MSA docket, because it has presented only special access data for competitors “other than wireless carriers.” Petition at 30. But this change does not cure other fundamental defects in its data. For example, Verizon fails to indicate the extent to which special access services are used as an input for interexchange services. Moreover, Verizon has presented no evidence as to why the FCC should reverse its prior holding that “the availability of UNEs is a competitive constraint on special access pricing.” *6-MSA Order* ¶ 38.

Furthermore, the FCC also pointed out in the *6 MSA Order* that competitors relied heavily UNEs instead of special access to provide service in the geographic areas at issue in that proceeding, including in the Providence MSA. Unsurprisingly, little has changed in the four months since the release of the *6-MSA Order*. One Communications as well as other carriers in

Rhode Island continue to rely on UNEs to provide service. Specifically, in Rhode Island, One Communications provides service using [begin highly confidential] [end highly confidential] UNE DS0 loops, and [begin highly confidential] [end highly confidential] UNE xDSL loops. At the same time, Verizon’s tariffed voice-grade special access services are not a viable substitute for DS0 UNEs. Indeed, One Communications [begin highly confidential] [end highly confidential] tariffed voice-grade special access lines in Rhode Island. It is clear that competitors remain critically reliant on UNEs in Rhode Island.

D. The FCC Should Again Reject Verizon’s Attempt to Include VoIP In the Relevant Product Market.

Verizon also repeats its tired argument that customers served via over-the-top VoIP service should be included as competitors’ customers in a measure of market share. As Verizon concedes, the FCC excluded over-the-top VoIP from its market share analysis in the *6-MSA Order* because “there are no data in the record that justify finding that these providers offer close substitute services.” *6-MSA Order* ¶ 23. Verizon offers no basis for the Commission to reverse this finding.

Verizon argues that the FCC should reverse itself because “new” data indicates that “there are more than 20 ‘over-the-top’ VoIP providers [in Rhode Island] that currently offer services with features comparable to Verizon’s wireline telephone service at prices that are typically lower than Verizon’s prices even when the cost of the underlying broadband connection needed for VoIP service is taken into account.” Petition at 16. Verizon attaches advertisements from a number of VoIP providers to back up its argument.²⁶ Verizon’s only other argument is

²⁶ See Petition, Attachment E, Declaration of Quintin Lew, John Wimsatt, and Patrick Garzillo, Exhibit 2 (“Lew/Wimsatt/Garzillo Dec.”).

that “the Commission itself previously has recognized that ‘some proportion of mass market consumers may view certain over-the-top VoIP services as substitutes for wireline local service.’” Petition at 16 citing *Verizon/MCI Merger Order* ¶ 91. But Verizon filed the *nearly the exact same data and made the exact same arguments using the exact same language* in its petitions filed in the 6-MSA proceeding.²⁷ Perhaps Verizon hopes that the FCC has a short term memory. Indeed, in previous proceedings before the Commission, MCI, now a part of Verizon, emphasized the “multitude of limitations in ubiquity, quality, cost, and maturity that currently make VoIP services an inadequate substitute for incumbent LEC voice service in the mass-market.”²⁸

V. VERIZON CANNOT DEMONSTRATE THAT COMPETITORS HAVE GAINED SUFFICIENT MARKET SHARE TO JUSTIFY FORBEARANCE FROM UNBUNDLING.

Notwithstanding its attempts to rig the market share test to ensure forbearance (or to do away with the test entirely), Verizon also asserts that the levels of competition in Rhode Island satisfy the test as applied by the Commission in the *6-MSA Order*. But the “evidence” Verizon

²⁷ See Petition of Verizon Tel. Cos. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Providence Metropolitan Statistical Area, WC Dkt. No. 06-172, at 12-13 (filed Sept. 6, 2006) (“Providence MSA Petition”) (“There are more than 25 ‘over-the-top’ VoIP providers that currently offer service in the Providence MSA. As demonstrated in the charts attached as Exhibits 1 and 2 . . . these providers offer services with features comparable to Verizon’s wireline telephone service, at prices that typically are lower than Verizon’s prices, even when the price of the underlying broadband connection needed for VoIP services are taken into account . . . In the *Verizon/MCI Order*, the Commission recognized that ‘some proportion of mass market customers may view certain over-the-top VoIP services as substitutes for wireline local service.’”).

²⁸ MCI Reply Comments, WC Dkt. No. 04-313, at 16 (filed Oct. 19, 2004). In its reply comments in the *TRRO* proceeding, MCI further explained that “VOIP is available only to those customers that first subscribe to broadband service” and that “[t]he high-speed broadband service that is required in order for VOIP function may be cost-prohibitive for many, and maybe unattractive to many others.” *Id.* at 17.

proffers in support of this assertion must be rejected, because it is fatally flawed in a number of fundamental respects.

A. Verizon's White Pages Listings Are An Unreliable Market Share Proxy.

Verizon argues that, because there is an approximately 1:1 ratio between Verizon's own white pages listings and actual residential access lines, Cox's residential access lines can be estimated by simply counting the number of Cox's white pages listings. *See* Petition at 11. But there is no reason to believe that there is a 1:1 ratio between competitors' white pages listings and the number of competitors' access lines.

For example, in One Communications' experience, the particular mix of products and services sold by a carrier can have a significant impact on the number of white pages listings per line for that particular carrier. The ratio of listings to lines even appears to vary significantly among RBOCs. While Verizon argues that approximately 100 percent of its residential access lines have corresponding white page listings, Qwest has stated that "about 75% of Qwest's residential lines are listed in the white pages directories."²⁹ The rate of residential access line white page listings therefore appears to vary by fully 25 percent between two similarly situated RBOCs. There is no reason to expect (and Verizon has not offered any such reason) that this level of variance would be any smaller for a non-RBOC competitor like Cox or another CLEC as compared to Verizon. There is therefore no basis for the Commission to rely on white pages listings as a proxy for Cox's and other competitors' access lines, and the Commission should reject Verizon's estimate of Cox's market share.

²⁹ *See, e.g.*, Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver Metropolitan Statistical Area, WC Dkt. No. 07-97, at 11 (filed Apr. 27, 2007) ("Qwest can thereby estimate the number of lines served by such CLECs, based on Qwest's internal data showing that about 75% of Qwest's residential lines are listed in the white pages directories.").

B. Verizon's Market Share Data Is Of The Same Vintage As The Data The FCC Found To Be Insufficient To Justify Forbearance In The Providence MSA.

Even if Verizon's market share data is accurate, the FCC already rejected forbearance based on data collected at nearly the same time in the *6-MSA Order*. In the *6-MSA Order*, the FCC relied on data filed by Cox on October 30, 2007. Verizon submitted its own residential line count as of September 2007.³⁰ In its present petition, Verizon submits its own switched access line counts as of December 2007 and Cox's white pages listings from January 2008. See Lew/Wimsatt/Garzillo Dec. ¶ 17. Thus, the instant petition relies on data that is only approximately three months more recent than the data the Commission deemed insufficient to justify forbearance in the *6-MSA Order*. It is almost certain that the change in access lines has been *de minimis* during that three month time period. It is for this reason that the Commission should grant the Joint Commenters' motion to dismiss or summarily deny Verizon's petition as simply an attempt to revisit the same issues addressed in the Commission's denial of the Verizon Providence MSA petition for forbearance.³¹

C. Verizon Overstates the Percentage of Customers Who Have Cut the Cord In Rhode Island.

Verizon argues that, based on data from a recent CDC report, 13.6 percent of customers in Rhode Island had cut-the-cord and substituted wireless service for wireline service as of the end of June 2007.³² As explained above, there does not seem to be any basis for including

³⁰ See Ex Parte Letter from Joseph Jackson, Associate Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 06-172, Attachment B, at 3 (filed Nov. 30, 2007).

³¹ See Access Point, Inc. et al., Motion To Dismiss, Or In the Alternative, Deny Petition for Forbearance, WC Dkt. No. 08-24 (filed Mar. 17, 2008).

³² See Petition at 12-13 (citing Stephen J. Blumberg & Julian V. Luke, Div. of Health Statistics, Nat'l Ctr. for Health Statistics, CDC, *Wireless Substitution: Early Release Estimates from the*

wireless customers in the same product market as wireline service, thus obviating any consideration of the CDC study. If the Commission nevertheless continues to include wireless service in the relevant market, it should reject Verizon's attempt to rely on the CDC study.

To begin with, even the results of the CDC study undermine the assertion that 13.6 percent of wireline customers in Rhode have cut-the-cord. Most obviously, the CDC found that the average cut-the-cord rate for the "Northeast" (including Rhode Island) is 8.8 percent. *See CDC Wireless Substitution Survey* at 3. The characteristics of the Rhode Island population further support the view that the cut-the-cord rate in the state is likely far below the national average and possibly even below the average rate in the Northeast. For example, the CDC notes that younger demographic groups are more likely to have cut the cord (*see id.*), but Rhode Island has a larger than average population over 65 and a lower than average population under 18.³³ Poverty also equates with a higher likelihood of cord cutting (*see CDC Wireless Substitution Survey* at 3), but Rhode Island's poverty rates are below the national average. *See RI Census Quickfacts*. Hispanics are also more likely to have cut the cord (*see CDC Wireless Substitution Survey* at 3) but Rhode Island has a lower percentage of Hispanics than the nation at large. *See RI Census Quickfacts*. Finally, men are more likely than average to have cut the cord (*see CDC Wireless Substitution Study* at 3), yet Rhode Island's male population percentage is relatively low. *See RI Census Quickfacts*. Verizon's own cut-the-cord study confirmed that there are

National Health Interview Survey, January-June 2007, at 2 (Dec. 10, 2007), <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200712.pdf> ("*CDC Wireless Substitution Survey*").

³³ *See* U.S. Census Bureau, State & County Quick Facts, Rhode Island, <http://quickfacts.census.gov/qfd/states/44000.html> (last visited Mar. 27, 2008) ("*RI Census Quickfacts*").

likely to be relatively low cut-the-cord rates among populations with most of these characteristics.³⁴

In all events, the most appropriate means of counting cut-the-cord customers in Rhode Island would be to rely on the actual customer counts. It seems likely that Verizon retains this kind of data, and should be required to submit it in this proceeding if it does. Otherwise, the Commission should seek this information from the mobile wireless providers that operate in Rhode Island.

D. Evidence Of Verizon’s Residential Access Line Losses Is Insufficient To Justify Forbearance In The Mass Market.

Verizon claims that losses in residential access lines provide “an independent basis” on which to grant forbearance in Rhode Island. Petition at 17. However, information regarding reductions in access lines is simply an indirect, and as the Commission has held, imprecise, measure of market share. In the *6-MSA Order*, the FCC rejected evidence of Verizon’s decline in residential access lines because “[t]here are many possible reasons for such decreases unrelated to the existence of last-mile facilities-based competition.” *Id.* ¶ 32. Stated differently, “the abandonment of a residential access line does not necessarily indicate the capture of that customer by a competitor.” *Id.* ¶ 39.

In any event, the cause of line losses is irrelevant. It is not disputed that Verizon has lost residential access lines in recent years or that some of those losses are due to competition in the mass market. Indeed, the FCC has already concluded that Verizon faces intramodal and intermodal competition for residential customers in the Providence MSA. *Id.* ¶ 23. The

³⁴ See *Verizon cut-the-cord study* (“Eighty-seven percent of females, versus 80 percent of males, plan to continue using their landline phone for the foreseeable future, whereas 90 percent of persons older than 65 said they will keep their landline phone forever as opposed to 82 percent of those under the age of 65.”).

Commission has made clear, however, that the relevant inquiry is not whether Verizon has lost residential access lines, but whether Verizon's market share, based on actual line counts in the appropriately defined geographic and product markets, is sufficiently low to justify forbearance. *Id.* ¶ 27 & n.89. As the FCC held in the *6-MSA Order*, "we rely upon the actual line counts submitted on the record by each carrier that is competing in the relevant geographic and product markets to the extent such data are available." *Id.* n.89. Verizon's reliance on purported line losses are therefore little more than a red herring.

VI. VERIZON HAS FAILED TO DEMONSTRATE THAT FACILITIES-BASED COMPETITORS' NETWORKS HAVE SUFFICIENT COVERAGE TO JUSTIFY FORBEARANCE.

In addition to its failure to satisfy the market share prong of the forbearance test, Verizon has also failed to satisfy the network coverage prong. The Commission concluded in the *Omaha Order* that forbearance from unbundling obligations is only appropriate in those wire centers where the cable company "covers"³⁵ 75 percent of all residential and business "end-user" customer locations. *Omaha Order* ¶ 62.³⁶ "End-users" includes both business and residential customer locations. But Verizon has only submitted coverage information for residential customer locations.

For example, as proof of statewide "coverage", Verizon cites to a Cox white paper stating that "'now about 95 percent of the state's *residents* can choose the cable company to deliver

³⁵ See *Omaha Order* n.156 ("As we use the term in this Order, an intermodal competitor 'covers' a location where it uses its own network, including its own loop facilities, through which it is willing and able, within a commercially reasonable time, to offer the full range of services that are substitutes for the incumbent LEC's local service offerings.").

³⁶ As the Joint Commenters have explained, this test is fatally flawed because it fails to separately account for coverage of business and residential customers. See 6-MSA Opposition 9-10; Qwest 4-MSA Opposition at 8-9.

local telephone service.” Petition at 7 (emphasis added). Verizon also argues that the fact that Cox provides “separate toll-free calling areas for each of the 24 exchanges (or rate centers) in the State of Rhode Island” proves that “Cox offers telephone service in each of these rates centers.” *Id.* Even if true, this information is irrelevant to whether the coverage test is satisfied. The fact that Cox provides phone service in all of these rate centers does not prove that Cox has “covered” 75 percent of the end-users in that rate center (or the wire centers within that rate center) with its network. Cox would have to have rates in a rate center even if it had only one customer in that rate center. Therefore, the fact that Cox has rates says nothing more than that it hopes to sell to one or more customers in the rate center. Indeed, Cox could provide separate toll-free calling areas in each of the 24 rate centers in Rhode Island even though Cox’s network passes few end-users in each rate center. It is clear therefore that Verizon has failed to proffer sufficient information to meet the coverage test as applied by the Commission in prior forbearance orders.

VII. VERIZON HAS FAILED TO DEMONSTRATE THAT THERE IS SUFFICIENT COMPETITION IN THE BUSINESS MARKET IN RHODE ISLAND TO JUSTIFY FORBEARANCE.

In the *6-MSA Order*, the Commission concluded that, based on the record evidence, competition in the provision of business services by cable operators and CLECs in the Providence MSA was insufficient to warrant eliminating of unbundling requirements. *Id.* ¶ 37. Verizon has provided no new evidence that would alter these findings with respect to the business market in Rhode Island. In fact, Verizon’s recent history of repeatedly increasing rates for business services in the state provides the most direct evidence that there is very little meaningful competition in the provision of services demanded by businesses in Rhode Island, and in no event could Verizon meet the Section 10 standard for UNEs needed to serve such customers.

A. Verizon Has Been Repeatedly Increasing Its Rates For Numerous Business Services In Rhode Island.

Verizon claims that there is significant competition in the business services market in Rhode Island. Petition at 20-31. For example, it asserts that “there is greater competition for enterprise customers in Rhode Island than either in Omaha or Anchorage, both in terms of facilities coverage and in terms of retail competition.” *Id.* at 20. Verizon’s pricing behavior, however, demonstrates the exact opposite.

A review of Verizon’s state tariff filings³⁷ reveals that the company has been consistently increasing rates for many of its business services in Rhode Island. Specifically, Verizon has increased prices for various business services no less than 12 times since it filed its request for forbearance in the Providence MSA on September 6, 2006.³⁸ These services include integrated T-1 services, directory listings, unlimited local usage, unlimited local and toll usage calling plans, business measured 1-party service, Frame Relay, ATM, and private line. Verizon has increased the prices for some of these services more than once during this 19-month period. For example, Verizon twice increased ATM rates by approximately ten percent and it twice increased Private Line rates by a minimum of approximately ten percent. It also increased prices for Frame Relay rate elements from anywhere between one to one hundred percent in October 2006 only to further increase them by approximately ten percent 13 months later.³⁹

³⁷ Verizon’s tariff filings are posted on the Rhode Island Public Utilities Commission’s website. See Rhode Island PUC, Commission Docket Menu, <http://www.ripuc.ri.gov/eventsactions/docket.html> (last visited Mar. 27, 2008).

³⁸ A chart showing each of Verizon’s tariff filings for business customers for the period September 6, 2006 to March 20, 2008 is attached hereto as Attachment F.

³⁹ While unbundled ATM, private line and Frame Relay are not directly implicated by the instant petition, the FCC has several times held that DS-1 and DS-3 loops, which are covered by the instant petition, are critical inputs for the provision of these services. See generally *AT&T Inc.*

Verizon implemented these frequent rate increases at the same time that it sought forbearance from the FCC on the basis that the business market in the Providence MSA was competitive. Now, Verizon continues to increase prices for business services in Rhode Island while simultaneously arguing before the Commission that the business market in the state is competitive. If Verizon's claims had any merit, one would reasonably expect that it would have been forced to lower its rates in order to attract new customers and retain existing ones. The fact that Verizon has instead been able to freely and repeatedly increase rates for one business service after another provides powerful evidence that competition in Rhode Island is not sufficient to constrain Verizon's pricing of business services and that Verizon continues to exert market power in the state.

B. Cable Competitors Do Not Offer Sufficient Competitive Discipline In The Rhode Island Business Market To Justify Forbearance.

As the Joint Commenters explained at length in the 6-MSA Opposition, intermodal competitors have not been competing to any significant degree in the provision of services to business customers in the Providence MSA. 6-MSA Opposition at 35-47. Specifically, there has been little support for Verizon's assertion that cable competition in Providence justifies the elimination of DS-0 loops needed to serve small businesses. *Id.* at 34-38. Moreover, in light of the apparent technical limitations of hybrid fiber-coax networks and substantial barriers to fiber deployment, there has been even less support for Verizon's similar claim with respect to DS-1 or DS-3 loops or transport. *Id.* This situation has not changed in the few months since the FCC

and BellSouth Corporation for Application for Transfer of Control, Memorandum Opinion and Order, 22 FCC Rcd. 5662 (2007) ("AT&T/BellSouth Merger Order"); Petition of ACS Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Section 251(c)(3) and 252(d)(1) in the Anchorage Study Area, Memorandum Opinion and Order, 22 FCC Rcd. 1958 ("Anchorage Order").

denied Verizon's forbearance petition for the Providence MSA, and it is no different for the state of Rhode Island than for the Providence MSA. In fact, rather than providing specific evidence that Cox has gained retail business market share in the state, or that Cox is a significant alternative source of wholesale inputs for carriers in Rhode Island, Verizon proffers little more than press releases and other information taken from company websites. *See, e.g.,* Lew/Wimsatt/Garzillo Dec. ¶¶ 41-46 & Exhibit 13 (including 21 pages of printouts from Cox's website).

For example, in support of its claim that Cox has a "ubiquitous" cable network, Petition at 21, Verizon offers only the conclusory statement that "it is clear that Cox has deployed facilities to serve enterprise customers in all locations where enterprise customers are concentrated." *Id.* at 22. Just because Verizon says so, however, does not make it so. In the *6-MSA Order*, the FCC found that "the record demonstrates the comparatively limited role of the cable operators in serving enterprise customers in these MSAs today." *6-MSA Order* ¶ 37. Specifically, the Commission found that "[m]ost of the cable operators state[d] that their networks are primarily in residential areas and their provision of services to enterprise customers are still in the initial stages." *Id.* n.116.

In addition, as the Joint Commenters explained in the 6-MSA Opposition, the FCC has determined that "cable companies have remained focused on mass market, largely residential service consistent with their historic residential network footprints,"⁴⁰ and therefore, cable companies' marketing to business customers has focused on those that are "near [the companies'] residential network[s]." *TRRO* ¶ 193. It is unsurprising, therefore, that Verizon

⁴⁰ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provision of the Telecommunications Act of 1996*, Report and Order, 18 FCC Rcd. 16978, ¶ 52 (2003), *subsequent history omitted* ("TRO").

points to Cox’s provision of phone and Internet service to the government of the Town of Cumberland, Rhode Island as a prime example of Cox’s service to business customers in the state. Petition at 24 & Exhibit 13 (Town of Cumberland “case study” from Cox Business Services’ website). Cumberland is a relatively small town without a major downtown business district. Moreover, while Verizon claims that Cox “competes aggressively for enterprise customers throughout the state –including in downtown Providence, where high-capacity demand is very heavily concentrated,” Petition at 22, none of the other examples of Cox business customers provided by Verizon is located in downtown Providence. *See id.* at 24. As Cox itself has stated, “despite Verizon’s claims, Cox’s presence in the Providence enterprise market remains limited.”⁴¹

Additionally, Verizon claims that Cox has “deployed fiber facilities to many enterprise locations,” but the only support it offers for this claim is an online article about Cox’s network upgrade to improve service to Rhode Island *residential* customers. Petition at 25. The only benefits of the upgrade cited in the article are improvements in Cox’s digital cable television service, expansion of high-definition and on-demand content offerings and increased Internet speeds of up to 20 Mbps.⁴² In fact, the article does not even mention Cox’s enterprise services, enterprise customers, or “enterprise locations.”

Furthermore, even if Verizon were able to demonstrate with specific evidence that Cox has a ubiquitous network in Rhode Island, such network coverage by a single intermodal competitor is, by itself, insufficient to meet the requirements of Section 10 for either the retail or

⁴¹ Comments of Cox Communications, Inc., WC Dkt. No. 06-172, at 32 (filed Mar. 5, 2007) (“Cox 6-MSA Comments”).

⁴² *Cox Completes EON Optical Network in R.I.*, Providence Business News, June 6, 2007, <http://www.pbn.com/stories/25801.html>.

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the wholesale market. The Commission has held that the Section 10 standard is only met in the retail market if the intermodal competitor has demonstrated substantial success in winning retail market share by providing services over its own network. *See Omaha Order* ¶ 64, n.177, ¶ 69; *see also Anchorage Order* ¶ 28.

Verizon, however, has failed to provide specific data on the number of business customers Cox serves using its own facilities in the state of Rhode Island. Rather, Verizon relies on the Commission's statements in the *Omaha Order* regarding Cox's "'strong success in the mass market'" (Petition at 23) and its "'current marketing efforts and emerging success in the enterprise market'" in the Omaha MSA to demonstrate the existence of cable competition in Rhode Island. Whatever the merits of these assertions as they pertain to Omaha (all available evidence indicates that the Omaha business market remains dominated by the ILEC), there is no evidence that Cox has been successful in serving businesses Rhode Island. Cox itself has stated that Verizon "overstates Cox's market share" and that the number of "business voice customers in the Providence MSA" is "tiny" "in comparison to the size and scope of Verizon's [confidential***] business lines in the market." Cox 6-MSA Comments at 32.

Finally, relying solely on pages from Cox's website, Verizon asserts that "Cox provides wholesale services in the Providence MSA," and therefore, "competition in the state is extensive." Petition at 25-26. To begin with, in the *6-MSA Order*, the FCC found that "[t]he record d[id] not reflect any significant alternative sources of wholesale inputs for carriers in the 6 MSAs," including the Providence MSA. *6-MSA Order* ¶ 38. The situation is no different in the state of Rhode Island only several months later, and Verizon has not provided any evidence to the contrary.

The Commission also concluded in the *Omaha Order* that there were no significant wholesale alternatives to Qwest in the Omaha MSA, but Verizon contends that “[t]he Commission nonetheless found that the ILEC’s ‘own wholesale offerings will continue to be adequate’ without offerings from other competitors.” Petition at 25 (quoting *Omaha Order* ¶ 67). Verizon is wrong for several reasons. *First*, even a single facilities-based competitor in the wholesale market for business services is insufficient to meet the requirements of Section 10. As the Commission has explained, it is critical that facilities-based wholesale competition “minimize[] the risk of duopoly and of coordinated behavior or other anticompetitive conduct.” *See Omaha Order* ¶ 71; *see also Anchorage Order* ¶ 46 (relying on continued rate regulation of ACS to prevent the development of an “an impermissible duopoly”). To ensure this outcome, the record must support the conclusion that there is enough facilities-based wholesale competition so that the ILEC has “the incentive to make attractive wholesale offerings” on terms and conditions that allow efficient competitors to compete even if UNEs are eliminated. *Omaha Order* ¶ 67. By contrast, here, as discussed above, there is scant evidence of competition in the business market in Rhode Island.

Second, Verizon ignores the fact that the Commission’s grants of forbearance from unbundling obligations in the *Omaha* and *Anchorage Orders* were not unconditional. Importantly, while the FCC relied in the *Omaha Order* (¶¶ 67-68) on the continued application of Section 251(c)(4) and Section 271(c) to serve as constraints on Qwest’s post-forbearance conduct, the FCC modified that precedent in the *Anchorage Order*, reflecting the implicit conclusion that Section 271-type requirements were no longer sufficient. *See Anchorage Order* ¶ 39 & n.133 (imposing an “ongoing obligation” to “provide loop access at the same rates, terms, and conditions negotiated between ACS and GCI in Fairbanks, Alaska”—rates only marginally

above those for UNEs—until a commercial agreement is reached). In fact, the Commission established this condition in the *Anchorage Order* precisely to address the concerns of McLeodUSA, which had argued that “Qwest’s non-recurring charges and special access pricing in the Omaha MSA following forbearance have made it difficult for McLeodUSA to compete in that market.” *Id.* n.134.

Third, Verizon’s reliance on the *Omaha Order* is misplaced because the FCC’s prediction regarding access to wholesale inputs for business services has proven to be wrong. The FCC made a “predictive judgment” that, as a result of competition in the mass market from Cox, “Qwest will not react to our decision here [to relieve Qwest of unbundling obligations in certain wire centers] by curtailing wholesale access to its analog, DS0, DS1 or DS3-capacity facilities.” *Omaha Order* ¶ 79. As detailed by the Joint Commenters in their Qwest 4-MSA Opposition⁴³, McLeodUSA’s experience in Omaha demonstrates that the Commission’s prediction was erroneous. Post-forbearance, Qwest has offered McLeodUSA DS-0 and DS-1 loops only at tariffed, special access rates that are significantly higher than cost-based UNE rates. As a result, McLeodUSA has been unable to economically serve its business customers and has publicly announced that it may have to discontinue operations in the Omaha market. *Id.* at 41-42.

C. Facilities-Based Competition From Non-Cable Competitors In The Rhode Island Business Market Is Insufficient To Justify Forbearance.

Verizon claims that there is sufficient competition from competitors other than Cox in the Rhode Island business market to warrant forbearance. To support this claim, Verizon makes many of the same arguments in its Petition here that it made in its 6-MSA Petitions. The

⁴³ See Qwest 4-MSA Opposition at 41-43.

majority of these arguments were rejected by the Commission in the *6-MSA Order*, however, and in the absence of any new evidence to the contrary, they should likewise be rejected here.

First, Verizon alleges that competition from the “wide variety” of “traditional telecom carriers” in Rhode Island is sufficient to warrant forbearance. Petition at 27. However, as explained in detail by the Joint Commenters in the 6-MSA Opposition (at 14-17), Verizon continues to control the only local transmission facilities (loops and transport) capable of serving the vast majority of business locations in Rhode Island, and there are substantial barriers to entry associated with self-deployment of such facilities. In its Petition, Verizon offers no evidence that such barriers are any less significant or that competition in the local transmission market is any greater in the state of Rhode Island than is the case elsewhere in the Providence MSA. Instead, just as it did in its 6-MSA Petitions, Verizon clouds the record with irrelevant and misleading information. It relies on press statements and website sales material describing the business retail service offerings of competitors, such as One Communications, that rely on Verizon’s loop and transport facilities. This evidence has no relevance to whether competitors can efficiently deploy such facilities themselves. *See* Lew/Wimsatt/Garzillo Dec. ¶¶ 46-52 & Exhibit 13.

Indeed, Verizon admits that it provides special access services to all of the “traditional telecom carriers” it cites as competitors. *Id.* ¶¶ 46-52 (listing the number of voice-grade equivalent lines purchased by each carrier according to Verizon’s wholesale billing records). Of course, as discussed, in the *6-MSA Order*, the FCC relied on the *TRRO* and explicitly rejected such evidence, holding that “[w]hile Verizon can demonstrate a fair amount of retail enterprise competition using Verizon’s special access services and UNEs, *competition that relies on Verizon’s own facilities is not a sufficient basis to grant forbearance from UNE requirements.*” *6-MSA Order* ¶ 42 (emphasis added). For this reason, Verizon’s claims of purported competition

from “traditional telecommunications carriers” and systems integrators—which *by definition* rely on the facilities of other carriers to provide services at retail to the business market—in Rhode Island must likewise be rejected. Petition at 27.

Second, Verizon offers reductions in its switched business access lines as “additional evidence that forbearance is warranted.” *Id.* at 30. However, as discussed above, the FCC already rejected evidence of Verizon’s declines in residential access lines in the *6-MSA Order* (¶ 39), and information showing switched business access line declines is even more unreliable as an indicator of Verizon’s retail business market share, because Verizon’s retail special access lines have undoubtedly increased during the same period.⁴⁴

Third, Verizon relies on the existence of competitive fiber networks in Rhode Island to support its Petition (at 27-28) even though the FCC explicitly rejected such evidence in the *6-MSA Order*. Specifically, the Commission found that fiber maps, the number of route miles, lists of fiber wholesalers, and counts of competitive networks “are not informative for identifying where any unbundling relief would be warranted or where a competitive carrier might serve a substantial number of buildings within a wire center.” *6-MSA Order* ¶ 40. For the same reason, Verizon’s Rhode Island competitive fiber data must be rejected.⁴⁵

⁴⁴ See Reply Comments of Verizon, WC Dkt. No. 05-25 *et al.*, at 1 (filed Aug. 15, 2007) (stating that “the number of special access lines Verizon provided increased by between 16 and 26 percent per year”).

⁴⁵ Verizon attempts to address the Commission’s criticism in the *6-MSA Order* that its previous data erroneously combined competitive fiber deployment in impaired wire centers with that in non-impaired wire centers (*see id.* ¶ 40) by arguing that “Verizon has not obtained *full* relief from its unbundling obligations in any of the wire centers in Rhode Island.” Petition at 28 (emphasis added). By Verizon’s own admission, however, it has received partial relief from unbundled loop or transport obligations in several wire centers in the state. *See* Exhibit 11 to Lew/Wimsatt/Garzillo Dec. (listing wire centers exempt from UNE high-cap loop and dedicated transport ordering pursuant to the *TRO*). Regardless of whether the competitive fiber deployment at issue is in impaired or non-impaired wire centers, the fact is that the Commission

Fourth, Verizon provides little support for its argument that fixed wireless is a viable alternative for business customers in Rhode Island. Petition at 28. In fact, Verizon cites two FCC decisions for its claim that fixed wireless “is now capable of providing enterprise customers with an alternative way to obtain access to voice and data services,” but the FCC never held that this is the case in those two or any of its other decisions. *See id.* & n.24. Indeed, the FCC did not even consider fixed wireless in its market share analysis in the *6-MSA Order*. The only remaining evidence offered by Verizon consists of press releases and other information taken from the website of a single fixed wireless provider, Towerstream. *See* Petition at 28 & Exhibit 13. Absent specific evidence that fixed wireless providers in Rhode Island can provide substitutes for the DS-0, DS-1, and DS-3-based services demanded by business customers, Verizon’s argument must be rejected.

VIII. THE FCC MAY NOT MAKE IMPAIRMENT FINDINGS OR ALTER THE IMPAIRMENT STANDARD IN A SECTION 10 PROCEEDING.

Verizon concludes its petition with a misguided attempt to redefine the manner in which the FCC has applied the forbearance standard as applied to unbundling requirements. Verizon argues that, in the context of a forbearance petition, the FCC can remove unbundling requirements even where impairment is shown if the standards of Section 10 are met, but that the FCC may not retain unbundling obligations where competitors have not been shown to be impaired absent the UNEs in question. Even if the market share test were not met, Verizon

has expressly found competitive fiber network data to be unpersuasive. *6-MSA Order* ¶ 40. In addition, in the *6-MSA Order*, the FCC noted that Verizon had overstated the importance of such evidence because “the Commission’s reference to competitive deployment in the [*Omaha Order*] was *incidental and supplemental to the Commission’s determination that Cox was a substantial competitive threat to Qwest for higher revenue enterprise services.*” *6-MSA Order* n.131 (emphasis added). As explained above, here, Cox is hardly “a substantial competitive threat” to Verizon in the provision of higher revenue business services in Rhode Island. Accordingly, the competitive fiber deployment data submitted by Verizon is even less relevant here.

argues that because “competition is possible” in Rhode Island, carriers are unimpaired without access to UNEs. *See* Petition at 36. Based on this logic, the Commission has no choice but to grant forbearance asserts Verizon.

But this argument is flatly inconsistent with past Commission decisions. The FCC has on more than one occasion held that it is *not permitted* to make impairment findings or to alter the impairment standard in a Section 10 proceeding.⁴⁶ The terms of the Act, in particular Section 251(d), support this conclusion.⁴⁷ The Commission reached its conclusions regarding impairment in the *TRRO*, and those impairment conclusions cannot be altered in the context of the FCC’s review of a forbearance petition. Accordingly, while the Commission’s assessment of a forbearance petition that seeks the elimination of unbundling is guided by the impairment

⁴⁶ *See Omaha Order* ¶ 14 (“Accordingly, our sole task here is to determine whether to forbear under the standard of section 10 from the regulatory and statutory provisions at issue, and we do not – and cannot – issue comprehensive proclamations in this proceeding regarding non-dominance, non-impairment, or section 251(h) status in the Omaha MSA”); *See id.* nn.177 & 48 (“In today’s Order, rather than making national impairment findings, we are applying the statutory standards of section 10 in a specific geographic market. . . . [F]orbearance at issue was limited to the requirements raised in the petition.”); *Anchorage Order* ¶ 11 (“Our sole task here is to determine whether to forbear under the standard of section 10 from the regulatory and statutory provisions at issue, and we do not – and cannot – issue comprehensive proclamations in this proceeding regarding non-impairment status in the Anchorage study area.”); *id.* n. 35 (“Thus, consistent with past practice, we do not craft any new impairment tests. We therefore reject commenters’ suggestions to the contrary.”); *see also Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, Memorandum Opinion and Order, 17 FCC Rcd 27000, ¶ 14 (2002).

⁴⁷ *See* 47 U.S.C. § 251(d)(1)-(2) (“Within 6 months after [the date of enactment of the Telecommunications Act of 1996], the Commission shall complete all actions necessary to *establish regulations* to implement the requirements of this section In determining what network elements should be made available for purposes of subsection (c)(3) of this section, the Commission shall consider, at a minimum, whether . . . the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.”) (emphasis added).

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analysis, it is not and cannot be governed by it.⁴⁸ The Commission can only assess a forbearance petition by applying the criteria set forth in Section 10.

IX. CONCLUSION

For the foregoing reasons, Verizon's petition for forbearance should be denied.

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March 28, 2008

⁴⁸ See *Anchorage Order* n.13 (“The Commission’s section 251(d)(2) impairment analysis, while instructive in a section 10(a) forbearance proceeding, does not bind the Commission’s forbearance review. In a forbearance proceeding, Congress has charged the Commission with determining whether the standards of section 10(a) are satisfied; those standards are not identical to the standards of section 251(d)(2). Compare 47 U.S.C. § 160(a) with 47 U.S.C. § 251(d)(2).”).

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ATTACHMENT A

Bristol County

SCALE

1 centimeter = 3.8 kilometers
 0 3.8 km
 0 1 inch = 6 miles 6 miles

